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**Achieving safety, dignity and respect
for all NYC's elders through
steadfast commitment to collaboration
and inspired solutions.**



NYC Elder Abuse Center

July/August 2011

Greetings from the NYC Elder Abuse Center!

The [NYC Elder Abuse Center](#) (NYCEAC) is a highly collaborative initiative. It brings together government and non-profit organizations to develop innovative responses to the problem of elder abuse - and provide practitioners with pertinent and relevant information to make their interventions more efficient and effective.

NYCEAC's bi-monthly eNewsletter provides practical information and resources on elder justice-related topics to help providers better assist elder abuse victims.

In this issue, we explore guardianship and alternatives to guardianship.

While it can be a time consuming and burdensome process, especially in New York State, sometimes guardianship is the only way to protect an older adult. But less restrictive options sometimes also prove to be viable pathways to protection and safety. Thus, alternatives to guardianship are also discussed in this eNewsletter.

We want to thank our esteemed colleagues at the [Brookdale Center for Healthy Aging & Longevity of Hunter College](#) for generously sharing their expertise and giving their time to write this eNewsletter: Jean Callahan, MSW, JD, Director and NYCEAC Steering Committee member; Debra Sacks, LPN, JD, Senior Staff Attorney; and Raquel Romanick, JD, Staff Attorney. Brookdale is a multidisciplinary center of excellence dedicated to the advancement of successful aging through research, policy analysis, advocacy, education, and the development of evidence-based practice models.

We hope you find the information provided in this eNewsletter useful. We welcome your feedback and ideas for future editions. Please [email us](#) your thoughts and suggestions.

Together we can prevent elder abuse - and increase victim safety, reduce suffering and improve the quality-of-life of older New Yorkers.

Regards,
Mark Lachs, MD, MPH, Director
Risa Breckman, LCSW, Deputy Director
Robin Roberts, LMSW, Multidisciplinary Team Coordinator

What is Guardianship?



All states have guardianship (sometimes known as conservator) laws to protect adults who are unable to make decisions for themselves such as medical treatment decisions and financial decisions. Through a legal proceeding, a court can appoint a guardian to assist individuals found to be incapacitated with aspects of life that the individual can no longer manage.

Consider this case example:

About two years ago, Mrs. A, an 84-year-old retired nurse, became re-acquainted with her nephew after years of no contact with him. At first it appeared to family members that Robert was helping Mrs. A around her home and that he was a good companion to her.

However, recently Mrs. A's daughter noticed that she had difficulty getting in touch with her mother and that her mother seemed secretive, and was vague about how she was spending her time. Mrs. A's daughter also noticed that Mrs. A's home was increasingly in poor condition. Yet, Mrs. A resisted any attempts to get hired help in the home, saying Robert would help her. Additionally, Mrs. A stopped going to her local senior center and she stopped socializing with longtime friends.

Finally, after not hearing from Mrs. A for over a week, her daughter became concerned and went to Mrs. A's house. The house was in disarray, and there was little food in the kitchen. Her daughter also looked at Mrs. A's most recent bank statements and saw numerous large withdrawals from the account, totaling over \$13,000. When Mrs. A's daughter asked what the withdrawals were for, Mrs. A said, "Robert handles that now...."

Mrs. A's daughter does not have a power of attorney and she is not her mother's health proxy. Out of concern for her mother's physical well-being and her finances, she petitions the court to become her mother's guardian.

As this case illustrates, a family member (or a professional or institution) wanting to protect older adults might pursue guardianship. Yet this legal mechanism can be confusing to those unfamiliar with it. The information in this section - and in the *How is a Guardian Appointed?* section below - provides readers with basic information about New York State's guardianship law and provides links to key resources on this topic.

In New York State, the guardianship law for all adults who become

In This Issue

What is Guardianship?
How is a Guardian Appointed?
What are the Alternatives to Guardianship?
What is the NYS Family Health Care Decision Making Act?

Quick Links

Keep current about events in the elder justice field - [Click here!](#)

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incapacitated is [Article 81 of the Mental Hygiene Law](#). Article 81 requires that a person needing a guardian either agree to the appointment or be determined incapacitated by a court. A determination of incapacity requires strong proof that the person will suffer harm because of their inability to manage financial or personal affairs and are unable to understand the nature and consequences of such inability.

A guardian has a very high standard of responsibility and accountability. The guardian must make decisions in light of the incapacitated person's functional level, understanding, personal wishes, preferences and desires.

After a hearing takes place, the court will determine if a guardian should be appointed and if so, what powers a guardian should have. A guardian of the property can be given power over any income and resources the court deems appropriate, with authority to use the property available to maintain and support the incapacitated person and those persons dependent upon the incapacitated person. A guardian given authority relating to the personal needs of the incapacitated person is able to make decisions regarding such things as housing, medical treatment and social relationships. The guardian is required to submit annual reports. For more information on guardian and fiduciary services, see the [NYS court website](#).

How is a Guardian Appointed?



An individual, a family member, friend, agency or institution, can petition for a guardianship if they are concerned that some harm will come to the older adult without one. Unfortunately, in New York it is almost impossible to bring a guardianship proceeding without an attorney. In other states, a large percentage of guardianship petitioners are "pro se" (meaning self-represented). An attorney familiar with guardianship will be needed to start this process in Supreme Court and will represent the petitioner through the court proceeding. To find a certified elder law attorney in your area, visit the [National Academy of Elder Law Attorneys \(NAELA\) website](#).

Unfortunately, some individuals have no one to bring a guardianship proceeding for them and do not live in an area where a community agency is located. (If no family or friends are available or willing to act as petitioner, the law allows a community agency to be petitioner.) In this situation, the individual may be eligible for Adult Protective Services (APS). In New York, this agency is authorized by law to intervene for adults who are in the community, at risk and have no one available to assist them. APS is able to act as petitioner and guardian for clients. See the [APS website](#) for eligibility requirements, how to make a referral and contact numbers.

See the [online manual](#), posted by the Guardian Assistance Network, for a detailed discussion of the role and responsibilities of the guardian, including annual reporting requirements.

Article 81 guardians must also complete a court approved training program once appointed. For information on several organizations that offer these training programs each year, [click here](#).

What are the Alternatives to Guardianship?



Guardianship is a drastic measure. It greatly limits an individual's autonomy and should be used only where no viable alternative exists. While Guardianship can often be a mechanism to keep a vulnerable older adult safe, the system that currently exists has serious shortcomings. In a report to the Chairman, Special Committee on Aging, U.S. Senate, the General Accounting Office found that a lack of

adequate screening of guardians, combined with a failure of many state courts to properly oversee the appointed guardian, has led to a system that is plagued by abuse and exploitation. To read the full report, [click here](#).

There are two main issues that most frequently lead to the need for a guardian: illness and lack of financial planning. Proper planning, such as filling out an advance directive, can often delay or prevent the need for a guardian. Most advance directives are easy to use and execute. In NYS, the following advance directives are available: *Power of Attorney* and *Health Care Proxies*.

Power of Attorney: Through the New York State Power of Attorney an individual (the Principal) can designate a person (Agent) to make financial decisions on their behalf. While these documents are broad, powerful and useful they can be amended to fit the individual needs of the Principal. For more information, please visit the websites for the [NYC Caregiver](#) and the [NYS Bar Association](#).

Health Care Proxies: New York State Public Health Law gives all competent adults the right to appoint another person to make health care decisions for them in the event that they are unable to make such decisions for themselves. Using a Health Care Proxy form, a person can designate an agent or proxy to "speak the patient's voice" when the patient is no longer able to express their own preferences or wishes regarding their health care. For the standard New York State Health Proxy form, [click here](#). For more information on Health Care Proxies, please visit the websites for the [Office of the NYS Attorney General](#), the [NYS Department of Health](#), the [NYS Bar Association](#), and the [NY Legal Assistance Group](#).

Daily Money Management Programs



For vulnerable older adults, management of daily financial obligations can become an overwhelming burden, quickly spiraling into adverse behaviors and at-risk situations such as unpaid bills, un-deposited checks, and the terrifying consequences of cut-off utilities, bank foreclosures, evictions, and financial exploitation.

To prevent the devastating consequences associated with the loss of financial independence and stability, social service agencies have developed community-based **Daily Money Management (DMM) programs** to assist vulnerable and frail older adults in protecting their financial security and serve as a deterrent to potential elder abuse. The most common DMM services are bill paying followed by budgeting and checkbook balancing. In addition agencies also manage debt, assist with banking, apply for grants and stipends and apply for entitlement benefits.

The Brookdale Center has conducted the first economic estimates of the value and costs of DMM programs. The results are striking. This research, a first of its kind, uses standard microeconomic costing techniques to estimate the costs of DMM programs, compared to current alternatives

such as nursing home placement or publicly supported Protective Services for Adults (PSA) programs. DMM programs were found to be significantly cost saving: DMM/case management programs save \$60,000 per individual, compared with nursing home placement. Moreover, the incremental costs of DMM are less than \$250 per month per individual, making them highly cost effective. Most importantly for quality of life, individuals are able remain in their homes and their communities. To read the complete DMM Research Report, [click here](#).

There are a handful of neighborhood case management agencies that offer DMM services in NYC and upstate New York. For a list of NYC agencies that may be able to take on new clients for DMM services, [click here](#).

The **bill payer program** provides volunteer assistance to low income seniors and adults with disabilities who are able to make their own financial decisions but need help with the tasks of monthly bill-paying. For information on a NYC bill payor program, [click here](#).

The American Association of Daily Money Managers (AADMM) is a national membership organization representing individuals and businesses in the profession of daily money management. These professionals provide personal financial/bookkeeping services to senior citizens, the disabled, busy professionals and others. For persons looking for assistance with finances for themselves or a family member, the AADMM website has a directory of qualified daily money managers in different states: [click here](#).

For assistance in setting up and running a DMM program, Brookdale has created a comprehensive "How To" manual for agencies. This manual is geared towards both agencies looking to initiate DMM and for those agencies already providing DMM services. To order a copy of the DMM Manual, please email a request to info@brookdale.org.

What is the NYS Family Health Care Decision Making Act ?



Until recently a guardianship proceeding was often the only avenue available when faced with an incapacitated adult without advanced directives. Even a long time spouse or child of a terminally ill adult was not permitted to make end of life decisions for their loved ones. The New York State Family Health Care Decision Making Act (FHCDA), which became effective June 1, 2010 permits surrogate decision making for people who have not executed an advanced directive, who lack the capacity to make health care decisions, and who are in a health care facility (hospital or nursing home). If a patient has a valid health care proxy or legally appointed guardian those rules still apply, but for some patients, this Act may provide an alternative to guardianship where an incapacitated individual needs to have critical medical decisions made. The FHCDA provides a list of surrogates who may make health care decisions for an adult who lacks capacity and does not have a legal guardian or proxy. [Click here](#) to view the Act.

For more information please visit the following websites: [Compassion and Support](#), [NYS Bar Association](#) and the [United Hospital Fund](#).

Upcoming Multidisciplinary Team Meetings

Professionals throughout Brooklyn and Manhattan have an opportunity to present complex elder abuse cases to the NYCEAC's multidisciplinary teams in Manhattan and Brooklyn to receive recommendations on assessment and interventions from the teams. For more information, please refer to the individual sections of NYCEAC's website re: the MDTs: [EACCRT](#) and [Brooklyn MDT](#).

The following are the upcoming dates for these MDT meetings:

Elder Abuse Case Coordination and Review Team (EACCRT) Meeting

Next Meeting Dates: August 3, 2011 and September 7, 2011

Time: 9:30 AM -11:00 AM

Place: Convenient Manhattan location

RSVP: Email [Robin Roberts](#) or call at 718-722-4839.

Brooklyn MDT Meeting

Date/Time: Wednesday mornings, 9:00-10:30 AM, 3 meetings/per month

Place: Downtown Brooklyn location

RSVP: Email [Robin Roberts](#) or call at 718-722-4839.

Contact Us

We want to hear from you! If you have ideas for articles or other suggestions about how this eNewsletter could be helpful to you in you work with elder abuse victims, please [email us](#) or call Risa Breckman at 212-746-1674.

Please forward this eNewsletter to anyone you think would benefit from it. *Thank you!*

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